MARY A. PETTIGREW

IBLA 82-740 Decided June 10, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting, in part, oil and gas lease offers N 34805, N 34806, N 34814, and N 34816.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

> The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

APPEARANCES: Mary A. Pettigrew, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mary A. Pettigrew appeals the decision of March 26, 1982, in which the Nevada State Office, Bureau of Land Management (BLM), rejected, in part, non-competitive oil and gas lease offers N 34805, N 34806, N 34814, and N 34816, because the lands are considered to be a critical raptor habitat, as concluded in an environmental assessment report (EAR) of the Moss Creek Canyon Area, and accordingly are excluded from oil and gas leasing.

Appellant argues that the BLM decision does not set forth documentation sufficient to uphold the rejection, under well established principles of the

Interior Board of Land Appeals. Subsequent inquiry by appellant to BLM elicited information relative to the EAR. Appellant suggests the EAR, completed in June 1976 is now out of date, and perhaps incorrect in its treatment of the raptor question. She argues that oil and gas operations are positive values which merit more consideration in the public interest, citing Bill J. Maddox, 17 IBLA 234 (1974). She asserts that oil and gas leasing is not totally incompatible with maintenance of a raptor habitat. Appellant questions the configuration of the alleged raptor habitat in Moss Creek Canyon, being three discontinuous parcels. She suggests protective stipulations, instead of a refusal to lease the lands in question, could probably obtain adequate protection for the raptors, and that she will willingly sign such stipulations, recognizing even that no occupancy of the raptor area would be permitted during the breeding, incubation, and rearing period from March 1 through June 30.

[1] It is well established that the Secretary of the Interior, in his discretion, may reject any offer to lease for oil and gas upon a proper determination that such leasing would not be in the public interest, even though the land is not withdrawn from leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-287 (1976). Udall v. Tallman, 380 U.S. 1, rehearing denied, 380 U.S. 989 (1965). But it is also well established that the refusal to lease such lands must be supported by facts to demonstrate clearly that such leasing would not be in the public interest. W. E. Haley, 46 IBLA 151 (1980). Mere conclusory finding unsupported by facts do not warrant rejection of an oil and gas lease application. John M. Lebfrom, 43 IBLA 67 (1979). See Tucker & Snyder Exploration Co., Inc., 51 IBLA 35 (1980).

Rejection of an oil and gas lease offer is a more serious measure than the most stringent stipulations, and the record where leasing has been refused should reflect that BLM has considered whether leasing subject to clear and reasonable stipulations would be sufficient to protect the public interest concerns voiced in an EAR. See Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981); Robert P. Kunkel, 41 IBLA 77 (1979).

BLM may condition issuance of an oil and gas lease on the execution of a no-surface occupancy stipulation, either for the duration of the lease or for specific time periods during the year. James M. Chudnow, 62 IBLA 16 (1982). But a no-surface occupancy stipulation must show that BLM adequately considered all factors involved and that the stipulation is a reasonable means to accomplish the proper Departmental purposes. Chudnow, supra.

The record before us does not reflect that BLM considered all available information weighing the various uses of the public land. In its decision to deny leasing of the so-called raptor habitat in the Moss Creek Canyon Area, there is nothing to show what factors, if any, BLM considered. In these circumstances we have no alternative but to set aside the BLM decision and

remand the cases for reconsideration to determine if the land may be leased for oil and gas with special stipulations, which appellant has stated she will accept. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is set aside and the cases remanded to BLM for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

1/ In her statement of reasons on appeal, appellant recognized the possibility that the case might be remanded for the inclusion of data sufficient to support BLM's original decision. Because of a desire "that all lease effective dates and terms be as consistent as possible," she has attempted to show that there was no justifiable basis for the partial rejection of her lease offers. While we recognize that a remand might well consume a considerable amount of time, the initial decision on whether or not to lease, and if leasing is to occur, what stipulations are justified is a matter committed to BLM. Should BLM reaffirm its original decision, the record would, at that time, presumably be sufficiently complete to allow us to substantively review BLM's actions. While appellant's submissions have convinced us that there are considerable questions relating to BLM's original decision, they have not persuaded us that the decision was clearly wrong.